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AB-1521 Land use: notice of proposed change: assisted housing developments. (2017-2018)

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Assembly Bill No. 1521

CHAPTER 377

An act to amend Sections 65863.10 and 65863.11 of the Government Code, relating to land use.

[Approved by Governor September 29, 2017. Filed with Secretary of State September 29, 2017.]

LEGISLATIVE COUNSEL'S DIGEST

AB 1521, Bloom. Land use: notice of proposed change: assisted housing developments.

(1) The Planning and Zoning Law requires an owner of an assisted housing development proposing the termination of a subsidy contract or prepayment of governmental assistance, or the owner of an assisted housing development for which there will be the expiration of rental restrictions, to provide a notice of the proposed change to each affected tenant household residing in the assisted housing development, as specified, and provide a copy of any notices issued to any prospective tenant at the time he or she is interviewed for eligibility. That law provides injunctive relief for persons aggrieved by a violation of these provisions, as specified.

This bill would require the owner of an assisted housing development that is within 3 years of a scheduled expiration of rental restrictions to also provide notice of the scheduled expiration of rental restrictions to any prospective tenant at the time he or she is interviewed for eligibility, and to existing tenants by posting the notice, as specified. The bill would additionally specify that injunctive relief may include, but is not limited to, the reimposition of prior restrictions, as specified, and restitution of rent increases that were collected improperly. The bill would additionally authorize the court to award attorney's fees and costs to a prevailing plaintiff bringing an action for injunctive relief pursuant to these provisions.

(2) The Planning and Zoning Law prohibits an owner of an assisted housing development, as defined, from terminating a subsidy contract or prepaying the mortgage, as specified, unless the owner or its agent has first provided specified entities an offer to purchase the development. That law requires an owner of an assisted housing development in which there will be the expiration of rental restrictions to also provide specified entities an opportunity to submit an offer to purchase the development. That law also requires an owner of an assisted housing development to provide specified entities with notice, as provided, of an opportunity to submit an offer to purchase under specified circumstances. Existing law requires an opportunity to purchase the development to be provided to entities that include, among others, regional or national nonprofit organizations, regional or national public agencies, and profit-motivated organizations.

This bill would limit the opportunity to purchase the development to those agencies and organizations described above that own and operate at least 3 comparable rent- and income-restricted affordable rental properties governed under a regulatory agreement with a department or agency of the State of California or the United States, either directly or by serving as the managing general partner of limited partnerships or managing member of limited liability corporations.

Existing law requires, to qualify as a purchaser of an assisted housing development, specified entities to, among other things, be capable of managing the housing and related facilities for its remaining useful life, as specified.

This bill would revise that requirement by instead requiring specified entities to be certified by the Department of Housing and Community Development, based on demonstrated relevant prior experience in California and current capacity, as capable of operating the housing and related facilities, as specified. The bill would require the department to establish a process for certifying these entities and to maintain a list of entities that are certified, as specified.

Existing law, if a qualified entity elects to purchase an assisted housing development, requires the qualified entity to make a bona fide offer to purchase the development, as specified. Existing law authorizes the owner or the qualified entity to request the fair market value of the property be determined by an independent appraiser. Existing law, during the first 180 days from the date of an owner's bona fide notice of the opportunity to submit an offer to purchase, requires an owner to accept a bona fide offer to purchase only from a qualified entity and requires a purchase agreement to be executed when a bona fide offer to purchase has been made to an owner and the offer is accepted.

This bill would revise the offer and acceptance process described above by requiring the bona fide offer to purchase made by the qualified entity to be at the market value determined by negotiation and agreement between the parties, and if the parties fail to reach an agreement regarding market value, by an appraisal process initiated by the owner's receipt of the bona fide offer, as specified. The bill would prohibit the owner, if the owner has received a bona fide offer to purchase made within 180 days of the owner's notice of the opportunity to submit an offer, from accepting offers from any other entity, and would require the owner to either accept this bona fide offer to purchase or declare to the Department of Housing and Community Development under penalty of perjury that the owner will not sell the property for at least 5 years from the date of the declaration. By expanding the definition of the crime of perjury, this bill would impose a state-mandated local program. This bill would require an owner who wishes to sell, and who has received a bona fide offer that meets these requirements, to accept the offer and execute a purchase agreement within 90 days of receipt of the offer. The bill would require the owner to take all steps reasonably required to renew any expiring housing assistance contract, or extend any available subsidies or use restrictions, as provided, once a bona fide offer is made.

Existing law requires an independent appraiser determining the fair market value of the property as described above to possess qualifications equivalent to those required by the members of the Appraisers Institute.

This bill would additionally require appraisers to be certified by the Department of Housing and Community Development as having sufficient experience in appraising comparable rental properties in California.

Existing law requires the Department of Housing and Community Development to undertake specified responsibilities and duties with respect to the provisions described above.

This bill would additionally require the department to refer violations of these provisions to the Attorney General, as specified, and monitor compliance with specified provisions by owners of assisted housing developments and to provide a report to the Legislature, as provided.

Existing law authorizes the requirements described above to be enforced either in law or in equity by specified entities.

This bill would additionally authorize a tenant association at the property or any affected public entity to enforce these requirements either in law or in equity. The bill would authorize the court to waive any bond requirement and award attorney's fees and costs to a prevailing plaintiff under these provisions.

(3) The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

Vote: majority Appropriation: no Fiscal Committee: yes Local Program: yes

THE PEOPLE OF THE STATE OF CALIFORNIA DO ENACT AS FOLLOWS:

SECTION 1. Section 65863.10 of the Government Code is amended to read:

65863.10. (a) As used in this section, the following terms have the following meanings:

(1) "Affected public entities" means the mayor of the city in which the assisted housing development is located, or, if located in an unincorporated area, the chair of the board of supervisors of the county; the appropriate local public housing authority, if any; and the Department of Housing and Community Development.

(2) "Affected tenant" means a tenant household residing in an assisted housing development, as defined in paragraph (3), at the time notice is required to be provided pursuant to this section, that benefits from the government assistance.

(3) "Assisted housing development" means a multifamily rental housing development that receives governmental assistance under any of the following programs:

(A) New construction, substantial rehabilitation, moderate rehabilitation, property disposition, and loan management set-aside programs, or any other program providing project-based assistance, under Section 8 of the United States Housing Act of 1937, as amended (42 U.S.C. Sec. 1437f).

(B) The following federal programs:

(i) The Below-Market-Interest-Rate Program under Section 221(d)(3) of the National Housing Act (12 U.S.C. Sec. 1715 l(d)(3) and (5)).

(ii) Section 236 of the National Housing Act (12 U.S.C. Sec. 1715z-1).

(iii) Section 202 of the Housing Act of 1959 (12 U.S.C. Sec. 1701q).

(C) Programs for rent supplement assistance under Section 101 of the Housing and Urban Development Act of 1965, as amended (12 U.S.C. Sec. 1701s).

(D) Programs under Sections 514, 515, 516, 533, and 538 of the Housing Act of 1949, as amended (42 U.S.C. Sec. 1485).

(E) Section 42 of the Internal Revenue Code.

(F) Section 142(d) of the Internal Revenue Code or its predecessors (tax-exempt private activity mortgage revenue bonds).

(G) Section 147 of the Internal Revenue Code (Section 501(c)(3) bonds).

(H) Title I of the Housing and Community Development Act of 1974, as amended (Community Development Block Grant Program).

(I) Title II of the Cranston-Gonzalez National Affordable Housing Act of 1990, as amended (HOME Investment Partnership Program).

(J) Titles IV and V of the McKinney-Vento Homeless Assistance Act of 1987, as amended, including the Department of Housing and Urban Development's Supportive Housing Program, Shelter Plus Care Program, and surplus federal property disposition program.

(K) Grants and loans made by the Department of Housing and Community Development, including the Rental Housing Construction Program, CHRP-R, and other rental housing finance programs.

(L) Chapter 1138 of the Statutes of 1987.

(M) The following assistance provided by counties or cities in exchange for restrictions on the maximum rents that may be charged for units within a multifamily rental housing development and on the maximum tenant income as a condition of eligibility for occupancy of the unit subject to the rent restriction, as reflected by a recorded agreement with a county or city:

(i) Loans or grants provided using tax increment financing pursuant to the Community Redevelopment Law (Part 1 (commencing with Section 33000) of Division 24 of the Health and Safety Code).

(ii) Local housing trust funds, as referred to in paragraph (3) of subdivision (a) of Section 50843 of the Health and Safety Code.

(iii) The sale or lease of public property at or below market rates.

(iv) The granting of density bonuses, or concessions or incentives, including fee waivers, parking variances, or amendments to general plans, zoning, or redevelopment project area plans, pursuant to Chapter 4.3 (commencing with Section 65915).

Assistance pursuant to this subparagraph shall not include the use of tenant-based Housing Choice Vouchers (Section 8(o) of the United States Housing Act of 1937, 42 U.S.C. Sec. 1437f(o), excluding subparagraph (13) relating to project-based assistance). Restrictions shall not include any rent control or rent stabilization ordinance imposed by a county, city, or city and county.

(4) "City" means a general law city, a charter city, or a city and county.

(5) "Expiration of rental restrictions" means the expiration of rental restrictions for an assisted housing development described in paragraph (3) unless the development has other recorded agreements restricting the rent to the same or lesser levels for at least 50 percent of the units.

(6) "Low or moderate income" means having an income as defined in Section 50093 of the Health and Safety Code.

(7) "Prepayment" means the payment in full or refinancing of the federally insured or federally held mortgage indebtedness prior to its original maturity date, or the voluntary cancellation of mortgage insurance, on an assisted housing development described in paragraph (3) that would have the effect of removing the current rent or occupancy or rent and occupancy restrictions contained in the applicable laws and the regulatory agreement.

(8) "Termination" means an owner's decision not to extend or renew its participation in a federal, state, or local government subsidy program or private, nongovernmental subsidy program for an assisted housing development described in paragraph (3), either at or prior to the scheduled date of the expiration of the contract, that may result in an increase in tenant rents or a change in the form of the subsidy from project-based to tenant-based.

(9) "Very low income" means having an income as defined in Section 50052.5 of the Health and Safety Code.

(b) (1) At least 12 months prior to the anticipated date of the termination of a subsidy contract, the expiration of rental restrictions, or prepayment on an assisted housing development, the owner proposing the termination or prepayment of governmental assistance or the owner of an assisted housing development in which there will be the expiration of rental restrictions shall provide a notice of the proposed change to each affected tenant household residing in the assisted housing development at the time the notice is provided and to the affected public entities. An owner who meets the requirements of Section 65863.13 shall be exempt from providing that notice. The notice shall contain all of the following:

(A) In the event of termination, a statement that the owner intends to terminate the subsidy contract or rental restrictions upon its expiration date, or the expiration date of any contract extension thereto.

(B) In the event of the expiration of rental restrictions, a statement that the restrictions will expire, and in the event of prepayment, termination, or the expiration of rental restrictions whether the owner intends to increase rents during the 12 months following prepayment, termination, or the expiration of rental restrictions to a level greater than permitted under Section 42 of the Internal Revenue Code.

(C) In the event of prepayment, a statement that the owner intends to pay in full or refinance the federally insured or federally held mortgage indebtedness prior to its original maturity date, or voluntarily cancel the mortgage insurance.

(D) The anticipated date of the termination, prepayment of the federal or other program or expiration of rental restrictions, and the identity of the federal or other program described in subdivision (a).

(E) A statement that the proposed change would have the effect of removing the current low-income affordability restrictions in the applicable contract or regulatory agreement.

(F) A statement of the possibility that the housing may remain in the federal or other program after the proposed date of termination of the subsidy contract or prepayment if the owner elects to do so under the terms of the federal government's or other program operator's offer.

(G) A statement whether other governmental assistance will be provided to tenants residing in the development at the time of the termination of the subsidy contract or prepayment.

(H) A statement that a subsequent notice of the proposed change, including anticipated changes in rents, if any, for the development, will be provided at least six months prior to the anticipated date of termination of the subsidy contract, or expiration of rental restrictions, or prepayment.

(I) A statement of notice of opportunity to submit an offer to purchase, as required in Section 65863.11.

(2) Notwithstanding paragraph (1), if an owner provides a copy of a federally required notice of termination of a subsidy contract or prepayment at least 12 months prior to the proposed change to each affected tenant household residing in the assisted housing development at the time the notice is provided and to the affected public entities, the owner shall be deemed in compliance with this subdivision, if the notice is in compliance with all federal laws. However, the federally required notice does not satisfy the requirements of Section 65863.11.

(c) (1) At least six months prior to the anticipated date of termination of a subsidy contract, expiration of rental restrictions or prepayment on an assisted housing development, the owner proposing the termination or prepayment of governmental assistance or the owner of an assisted housing development in which there will be the expiration of rental restrictions shall provide a notice of the proposed change to each affected tenant household residing in the assisted housing development at the time the notice is provided and to the affected public entities. An owner who meets the requirements of Section 65863.13 shall be exempt from providing that notice.

(2) The notice to the tenants shall contain all of the following:

(A) The anticipated date of the termination or prepayment of the federal or other program, or the expiration of rental restrictions, and the identity of the federal or other program, as described in subdivision (a).

(B) The current rent and rent anticipated for the unit during the 12 months immediately following the date of the prepayment or termination of the federal or other program, or expiration of rental restrictions.

(C) A statement that a copy of the notice will be sent to the city, county, or city and county, where the assisted housing development is located, to the appropriate local public housing authority, if any, and to the Department of Housing and Community Development.

(D) A statement of the possibility that the housing may remain in the federal or other program after the proposed date of subsidy termination or prepayment if the owner elects to do so under the terms of the federal government's or other program administrator's offer or that a rent increase may not take place due to the expiration of rental restrictions.

(E) A statement of the owner's intention to participate in any current replacement subsidy program made available to the affected tenants.

(F) The name and telephone number of the city, county, or city and county, the appropriate local public housing authority, if any, the Department of Housing and Community Development, and a legal services organization, that can be contacted to request additional written information about an owner's responsibilities and the rights and options of an affected tenant.

(3) In addition to the information provided in the notice to the affected tenant, the notice to the affected public entities shall contain information regarding the number of affected tenants in the project, the number of units that are government assisted and the type of assistance, the number of the units that are not government assisted, the number of bedrooms in each unit that is government assisted, and the ages and income of the affected tenants. The notice shall briefly describe the owner's plans for the project, including any timetables or deadlines for actions to be taken and specific governmental approvals that are required to be obtained, the reason the owner seeks to terminate the subsidy contract or prepay the mortgage, and any contacts the owner has made or is making with other governmental agencies or other interested parties in connection with the notice. The owner shall also attach a copy of any federally required notice of the termination of the subsidy contract or prepayment that was provided at least six months prior to the proposed change. The information contained in the notice shall be based on data that is reasonably available from existing written tenant and project records.

(d) The owner proposing the termination or prepayment of governmental assistance or the owner of an assisted housing development in which there will be the expiration of rental restrictions shall provide additional notice of any significant changes to the notice required by subdivision (c) within seven business days to each affected tenant household residing in the assisted housing development at the time the notice is provided and to the affected public entities. "Significant changes" shall include, but not be limited to, any changes to the date of termination or prepayment, or expiration of rental restrictions or the anticipated new rent.

(e) (1) An owner who is subject to the requirements of this section shall also provide a copy of any notices issued to existing tenants pursuant to subdivision (b), (c), or (d) to any prospective tenant at the time he or she is interviewed for eligibility.

(2) The owner of an assisted housing development that is within three years of a scheduled expiration of rental restrictions shall also provide notice of the scheduled expiration of rental restrictions to any prospective tenant at the time he or she is interviewed for eligibility, and to existing tenants by posting the notice in an accessible location of the property. This notice shall also be provided to affected public entities. This paragraph is applicable only to owners of assisted housing developments where the rental restrictions are scheduled to expire after January 1, 2021.

(f) This section shall not require the owner to obtain or acquire additional information that is not contained in the existing tenant and project records, or to update any information in his or her records. The owner shall not be held liable for any inaccuracies contained in these records or from other sources, nor shall the owner be liable to any party for providing this information.

(g) (1) For purposes of this section, service of the notice to the affected tenants shall be made by first-class mail postage prepaid.

(2) For purposes of this section, service of notice to the city, county, city and county, appropriate local public housing authority, if any, and the Department of Housing and Community Development shall be made by either first-class mail postage prepaid or electronically to any public entity that has provided an email address for that purpose.

(h) Nothing in this section shall enlarge or diminish the authority, if any, that a city, county, city and county, affected tenant, or owner may have, independent of this section.

(i) If, prior to January 1, 2001, the owner has already accepted a bona fide offer from a qualified entity, as defined in subdivision (c) of Section 65863.11, and has complied with this section as it existed prior to January 1, 2001, at the time the owner decides to sell or otherwise dispose of the development, the owner shall be deemed in compliance with this section.

(j) Injunctive relief shall be available to any party identified in paragraph (1) or (2) of subdivision (a) who is aggrieved by a violation of this section. Injunctive relief pursuant to this subdivision may include, but is not limited to, reimposition of the prior restrictions until any required notice is provided and the required period has elapsed, and restitution of any rent increases collected without compliance with this section. In a judicial action brought pursuant to this subdivision, the court may award attorney's fees and costs to a prevailing plaintiff.

(k) The Director of Housing and Community Development shall approve forms to be used by owners to comply with subdivisions (b) and (c). Once the director has approved the forms, an owner shall use the approved forms to comply with subdivisions (b) and (c).

SEC. 2. Section 65863.11 of the Government Code is amended to read:

65863.11. (a) Terms used in this section shall be defined as follows:

(1) "Assisted housing development" and "development" mean a multifamily rental housing development of five or more units as defined in paragraph (3) of subdivision (a) of Section 65863.10.

(2) "Owner" means an individual, corporation, association, partnership, joint venture, or business entity that holds title to an assisted housing development.

(3) "Tenant" means a tenant, subtenant, lessee, sublessee, or other person legally in possession or occupying the assisted housing development.

(4) "Tenant association" means a group of tenants who have formed a nonprofit corporation, cooperative corporation, or other entity or organization, or a local nonprofit, regional, or national organization whose purpose includes the acquisition of an assisted housing development and that represents the interest of at least a majority of the tenants in the assisted housing development.

(5) "Low or moderate income" means having an income as defined in Section 50093 of the Health and Safety Code.

(6) "Very low income" means having an income as defined in Section 50105 of the Health and Safety Code.

(7) "Local nonprofit organizations" means not-for-profit corporations organized pursuant to Division 2 (commencing with Section 5000) of Title 1 of the Corporations Code that have as their principal purpose the ownership, development, or management of housing or community development projects for persons and families of low or moderate income and very low income, and which have a broadly representative board, a majority of whose members are community based and have a proven track record of local community service.

(8) "Local public agencies" means housing authorities, redevelopment agencies, or any other agency of a city, county, or city and county, whether general law or chartered, which are authorized to own, develop, or manage housing or community development projects for persons and families of low or moderate income and very low income.

(9) "Regional or national organizations" means not-for-profit, charitable corporations organized on a multicounty, state, or multistate basis that have as their principal purpose the ownership, development, or management of housing or community development projects for persons and families of low or moderate income and very low income and own and operate at least three comparable rent- and income-restricted affordable rental properties governed under a regulatory agreement with a department or agency of the State of California or the United States, either directly or by serving as the managing general partner of limited partnerships or managing member of limited liability corporations.

(10) "Regional or national public agencies" means multicounty, state, or multistate agencies that are authorized to own, develop, or manage housing or community development projects for persons and families of low or moderate income and very low income and own and operate at least three comparable rent- and income-restricted affordable rental properties governed under a regulatory agreement with a department or agency of the State of California or the United States, either directly or by serving as the managing general partner of limited partnerships or managing member of limited liability corporations.

(11) "Use restriction" means any federal, state, or local statute, regulation, ordinance, or contract that, as a condition of receipt of any housing assistance, including a rental subsidy, mortgage subsidy, or mortgage insurance, to an assisted housing development, establishes maximum limitations on tenant income as a condition of eligibility for occupancy of the units within a development, imposes any restrictions on the maximum rents that could be charged for any of the units within a development;

or requires that rents for any of the units within a development be reviewed by any governmental body or agency before the rents are implemented.

(12) "Profit-motivated housing organizations and individuals" means individuals or two or more persons organized pursuant to Division 1 (commencing with Section 100) of Title 1 of, Division 3 (commencing with Section 1200) of Title 1 of, or Chapter 5 (commencing with Section 16100) of Title 2 of, the Corporations Code, that carry on as a business for profit and own and operate at least three comparable rent- and income-restricted affordable rental properties governed under a regulatory agreement with a department or agency of the State of California or the United States, either directly or by serving as the managing general partner of limited partnerships or managing member of limited liability corporations.

(13) "Department" means the Department of Housing and Community Development.

(14) "Offer to purchase" means an offer from a qualified or nonqualified entity that is nonbinding on the owner.

(15) "Expiration of rental restrictions" has the meaning given in paragraph (5) of subdivision (a) of Section 65863.10.

(b) An owner of an assisted housing development shall not terminate a subsidy contract or prepay the mortgage pursuant to Section 65863.10, unless the owner or its agent shall first have provided each of the entities listed in subdivision (d) an opportunity to submit an offer to purchase the development, in compliance with subdivisions (g) and (h). An owner of an assisted housing development in which there will be the expiration of rental restrictions shall also provide each of the entities listed in subdivision (d) an opportunity to submit an offer to purchase the development, in compliance with subdivisions (g) and (h). An owner who meets the requirements of Section 65863.13 shall be exempt from this requirement.

(c) An owner of an assisted housing development shall not sell, or otherwise dispose of, the development at any time within the five years prior to the expiration of rental restrictions or at any time if the owner is eligible for prepayment or termination within five years unless the owner or its agent shall first have provided each of the entities listed in subdivision (d) an opportunity to submit an offer to purchase the development, in compliance with this section. An owner who meets the requirements of Section 65863.13 shall be exempt from this requirement.

(d) The entities to whom an opportunity to purchase shall be provided include only the following:

- (1) The tenant association of the development.
- (2) Local nonprofit organizations and public agencies.
- (3) Regional or national nonprofit organizations and regional or national public agencies.
- (4) Profit-motivated housing organizations or individuals.

(e) For the purposes of this section, to qualify as a purchaser of an assisted housing development, an entity listed in subdivision (d) shall do all of the following:

(1) Be certified by the department, based on demonstrated relevant prior experience in California and current capacity, as capable of operating the housing and related facilities for its remaining useful life, either by itself or through a management agent. The department shall establish a process for certifying qualified entities and maintain a list of entities that are certified, which list shall be updated at least annually.

(2) Agree to obligate itself and any successors in interest to maintain the affordability of the assisted housing development for households of very low, low, or moderate income for either a 30-year period from the date that the purchaser took legal possession of the housing or the remaining term of the existing federal government assistance specified in subdivision (a) of Section 65863.10, whichever is greater. The development shall be continuously occupied in the approximate percentages that those households who have occupied that development on the date the owner gave notice of intent or the approximate percentages specified in existing use restrictions, whichever is higher. This obligation shall be recorded prior to the close of escrow in the office of the county recorder of the county in which the development is located and shall contain a legal description of the property, indexed to the name of the owner as grantor. An owner that obligates itself to an enforceable regulatory agreement that will ensure for a period of not less than 30 years that rents for units occupied by low- and very low income households or that are vacant at the time of executing a purchase agreement will conform with restrictions imposed by Section 42(f) of the Internal Revenue Code shall be deemed in compliance with this paragraph. In addition, the regulatory agreement shall contain provisions requiring the renewal of rental subsidies, should they be available, provided that assistance is at a level to maintain the project's fiscal viability.

(3) Local nonprofit organizations and public agencies shall have no member among their officers or directorate with a financial interest in assisted housing developments that have terminated a subsidy contract or prepaid a mortgage on the development without continuing the low-income restrictions.

(f) If an assisted housing development is not economically feasible, as determined by all entities with regulatory agreements and deed-restrictions on the development, a purchaser shall be entitled to remove one or more units from the rent and occupancy requirements as is necessary for the development to become economically feasible, provided that once the development is again economically feasible, the purchaser shall designate the next available units as low-income units up to the original number of those units.

(g) If an owner decides to terminate a subsidy contract, or prepay the mortgage pursuant to Section 65863.10, or sell or otherwise dispose of the assisted housing development pursuant to subdivision (b) or (c), or if the owner has an assisted housing development in which there will be the expiration of rental restrictions, the owner shall first give notice of the opportunity to offer to purchase to each qualified entity on the list provided to the owner by the department, in accordance with subdivision (o), as well as to those qualified entities that directly contact the owner. The notice of the opportunity to offer to purchase must be given prior to or concurrently with the notice required pursuant to Section 65863.10 for a period of at least 12 months. The owner shall contact the department to obtain the list of qualified entities. The notice shall conform to the requirements of subdivision (h) and shall be sent to the entities by registered or certified mail, return receipt requested. The owner shall also post a copy of the notice in a conspicuous place in the common area of the development.

(h) The initial notice of a bona fide opportunity to submit an offer to purchase shall contain all of the following:

(1) A statement addressing all of the following:

(A) Whether the owner intends to maintain the current number of affordable units and level of affordability.

(B) Whether the owner has an interest in selling the property.

(C) Whether the owner has executed a contract or agreement of at least five years' duration with a public entity to continue or replace subsidies to the property and to maintain an equal or greater number of units at an equal or deeper level of affordability and, if so, the length of the contract or agreement.

(2) A statement that each of the type of entities listed in subdivision (d), or any combination of them, has the right to purchase the development under this section.

(3) (A) Except as provided in subparagraph (B), a statement that the owner will make available to each of the types of entities listed in subdivision (d), within 15 business days of receiving a request therefor, that includes all of the following:

(i) Itemized lists of monthly operating expenses for the property.

(ii) Capital improvements, as determined by the owner, made within each of the two preceding calendar years at the property.

(iii) The amount of project property reserves.

(iv) Copies of the two most recent financial and physical inspection reports on the property, if any, filed with a federal, state, or local agency.

(v) The most recent rent roll for the property listing the rent paid for each unit and the subsidy, if any, paid by a governmental agency as of the date the notice of intent was made pursuant to Section 65863.10.

(vi) A statement of the vacancy rate at the property for each of the two preceding calendar years.

(vii) The terms of assumable financing, if any, the terms of the subsidy contract, if any, and proposed improvements to the property to be made by the owner in connection with the sale, if any.

(B) Subparagraph (A) shall not apply if 25 percent or less of the units on the property are subject to affordability restrictions or a rent or mortgage subsidy contract.

(C) A corporation authorized pursuant to Section 52550 of the Health and Safety Code or a public entity may share information obtained pursuant to subparagraph (A) with other prospective purchasers, and shall not be required to sign a confidentiality agreement as a condition of receiving or sharing this information, provided that the information is used for the purpose of attempting to preserve the affordability of the property.

(4) A statement that the owner has satisfied all notice requirements pursuant to subdivision (b) of Section 65863.10, unless the notice of opportunity to submit an offer to purchase is delivered more than 12 months prior to the anticipated date of termination, prepayment, or expiration of rental restrictions.

(i) If a qualified entity elects to purchase an assisted housing development, it shall make a bona fide offer to purchase the development at the market value determined pursuant to subdivision (k), subject to the requirements of this subdivision. A qualified entity's bona fide offer to purchase shall be submitted within 180 days of the owner's notice of the opportunity to submit an offer pursuant to subdivision (g), identify whether it is a tenant association, nonprofit organization, public agency, or profit-motivated organizations or individuals, and certify, under penalty of perjury, that it is qualified pursuant to subdivision (e). If an owner has received a bona fide offer from a qualified entity within the first 180 days from the date of an owner's bona fide notice of the opportunity to submit an offer to purchase, the owner shall not accept offers from any other entity and shall either accept the bona fide offer to purchase or declare under penalty of perjury in writing to the qualified entity and the department on a form approved by the department that it will not sell the property for at least five years from the date of the declaration. Once a bona fide offer is made, the owner shall take all steps reasonably required to renew any expiring housing assistance contract, or extend any available subsidies or use restrictions, if feasible, prior to the effective date of any expiration or termination. In the event that the owner declines to sell the property to the qualified entity, the owner shall record the declaration with the county in which the property is located. Once the owner has recorded the declaration, the owner shall be deemed to have fulfilled all obligations under this section.

(j) When a bona fide offer to purchase has been made that meets the requirements of this section and the owner wishes to sell, the owner shall accept the offer and execute a purchase agreement within 90 days of receipt of the offer.

(k) The market value of the property shall be determined by negotiation and agreement between the parties. If the parties fail to reach an agreement regarding the market value, the market value shall be determined by an appraisal process initiated by the owner's receipt of the bona fide offer, which shall specifically reference the appraisal process provided by this subdivision as the means for determining the final purchase price. Either the owner or the qualified entity, or both, may request that the fair market value of the property's highest and best use, based on current zoning, be determined by an independent appraiser qualified to perform multifamily housing appraisals, who shall be selected and paid by the requesting party. All appraisers shall possess qualifications equivalent to those required by the members of the Appraisers Institute and shall be certified by the department as having sufficient experience in appraising comparable rental properties in California. If the appraisals differ by less than 5 percent, the market value and sales price shall be set at the higher appraised value. If the appraisals differ by more than 5 percent, the parties may elect to have the appraisers negotiate a mutually agreeable market value and sales price, or to jointly select a third appraiser, whose determination of market value and the sales price shall be binding.

(l) During the 180-day period following the initial 180-day period required pursuant to subdivision (i), an owner may accept an offer from a person or an entity that does not qualify under subdivision (e). This acceptance shall be made subject to the owner's providing each qualified entity that made a bona fide offer to purchase the first opportunity to purchase the development at the same terms and conditions as the pending offer to purchase, unless these terms and conditions are modified by mutual consent. The owner shall notify in writing those qualified entities of the terms and conditions of the pending offer to purchase, sent by registered or certified mail, return receipt requested. The qualified entity shall have 30 days from the date the notice is mailed to submit a bona fide offer to purchase and that offer shall be accepted by the owner. The owner shall not be required to comply with the provisions of this subdivision if the person or the entity making the offer during this time period agrees to maintain the development for persons and families of very low, low, and moderate income in accordance with paragraph (2) of subdivision (e). The owner shall notify the department regarding how the buyer is meeting the requirements of paragraph (2) of subdivision (e).

(m) This section shall not apply to any of the following: a government taking by eminent domain or negotiated purchase; a forced sale pursuant to a foreclosure; a transfer by gift, devise, or operation of law; a sale to a person who would be included within the table of descent and distribution if there were to be a death intestate of an owner; or an owner who certifies, under penalty of perjury, the existence of a financial emergency during the period covered by the first right of refusal requiring immediate access to the proceeds of the sale of the development. The certification shall be made pursuant to subdivision (p).

(n) Prior to the close of escrow, an owner selling, leasing, or otherwise disposing of a development to a purchaser who does not qualify under subdivision (e) shall certify under penalty of perjury that the owner has complied with all provisions of this section and Section 65863.10. This certification shall be recorded and shall contain a legal description of the property, shall be indexed to the name of the owner as grantor, and may be relied upon by good faith purchasers and encumbrances for value and without notice of a failure to comply with the provisions of this section.

Any person or entity acting solely in the capacity of an escrow agent for the transfer of real property subject to this section shall not be liable for any failure to comply with this section unless the escrow agent either had actual knowledge of the requirements of this section or acted contrary to written escrow instructions concerning the provisions of this section.

(o) The department shall undertake the following responsibilities and duties:

(1) Maintain a form containing a summary of rights and obligations under this section and make that information available to owners of assisted housing developments as well as to tenant associations, local nonprofit organizations, regional or national nonprofit organizations, public agencies, and other entities with an interest in preserving the state's subsidized housing.

(2) Compile, maintain, and update a list of entities in subdivision (d) that have either contacted the department with an expressed interest in purchasing a development in the subject area or have been identified by the department as potentially having an interest in participating in a right-of-first-refusal program. The department shall publicize the existence of the list statewide. Upon receipt of a notice of intent under Section 65863.10, the department shall make the list available to the owner proposing the termination, prepayment, or removal of government assistance or to the owner of an assisted housing development in which there will be the expiration of rental restrictions. If the department does not make the list available at any time, the owner shall only be required to send a written copy of the opportunity to submit an offer to purchase notice to the qualified entities which directly contact the owner and to post a copy of the notice in the common area pursuant to subdivision (g).

(3) (A) Monitor compliance with this section and Sections 65863.10 and 65863.13 by owners of assisted housing developments and, notwithstanding Section 10231.5, provide a report to the Legislature, on or before March 31, 2019, and on or before March 31 each year thereafter, containing information for the previous year that includes, but is not limited to, the following:

(i) The number of properties and rental units subject to this section and Sections 65863.10 and 65863.13.

(ii) The number of properties and units that did any of the following:

(I) Complied with the requirements of this section and Sections 65863.10 and 65863.13.

(II) Failed to comply with the requirements of this section and Sections 65863.10 and 65863.13.

(III) Were offered for sale and therefore subject to the purchase right provisions of this section.

(IV) Were offered for sale and complied with the purchase right provisions of this section and the outcomes of the purchase right actions, including whether the property changed hands, to whom, and with what impact on affordability protections.

(V) Were offered for sale and failed to comply with the purchase right provisions of this section, the reason for their failure to comply, and the impact of their failure to comply on the affordability protections and the tenants who were residing in the property at the time of the failure.

(VI) Claimed exemptions from the obligations of this section pursuant to Section 65863.13 by category of reason for exemption.

(VII) Claimed exemptions from the obligations of this section and lost affordability protections and the impact on the tenants of the loss of the affordability protections.

(VIII) Were not offered for sale and complied with the requirement to properly execute and record a declaration.

(IX) Were not for sale and failed to comply with the requirement to properly execute and record a declaration.

(B) To facilitate the department's compliance monitoring owners of assisted housing developments in which at least 25 percent of the units on the property are subject to affordability restrictions or a rent or mortgage subsidy contract shall certify compliance with this section and Sections 65863.10 and 65863.13 to the department annually, under penalty of perjury, in a form as required by the department.

(C) The report required to be submitted pursuant to this paragraph shall be submitted in compliance with Section 9795.

(4) Refer violations of this section and Sections 65863.10 and 65863.13 to the Attorney General for appropriate enforcement action.

(p) (1) The provisions of this section may be enforced either in law or in equity by any qualified entity entitled to exercise the opportunity to purchase and right of first refusal under this section or any tenant association at the property or any affected public entity that has been adversely affected by an owner's failure to comply with this section. In any judicial action brought pursuant to this subdivision, the court may waive any bond requirement and may award attorney's fees and costs to a prevailing plaintiff.

(2) An owner may rely on the statements, claims, or representations of any person or entity that the person or entity is a qualified entity as specified in subdivision (d), unless the owner has actual knowledge that the purchaser is not a qualified entity.

(3) If the person or entity is not an entity as specified in subdivision (d), that fact, in the absence of actual knowledge as described in paragraph (2), shall not give rise to any claim against the owner for a violation of this section.

(q) It is the intent of the Legislature that the provisions of this section are in addition to, but not preemptive of, applicable federal laws governing the sale or other disposition of a development that would result in either (1) a discontinuance of its use as an assisted housing development or (2) the termination or expiration of any low-income use restrictions that apply to the development.

(r) This section shall not apply to either of the following:

(1) An assisted housing development as described in clause (iv) of subparagraph (M) of paragraph (3) of subdivision (a) of Section 65863.10 in which 25 percent or less of the units are subject to affordability restrictions.

(2) An assisted housing development in which 25 percent or less of the units are subject to affordability restrictions that was developed in compliance with a local ordinance, charter amendment, specific plan, resolution, or other land use policy or regulation requiring that a housing development contain a fixed percentage of units affordable to extremely low-, very low-, low-, or moderate-income households.

(s) The department shall comply with any obligations under this section through the use of standards, forms, and definitions adopted by the department. The department may review, adopt, amend, and repeal the standards, forms, or definitions to implement this section. Any standards, forms, or definitions adopted to implement this section shall not be subject to Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2.

SEC. 3. No reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution because the only costs that may be incurred by a local agency or school district will be incurred because this act creates a new crime or infraction, eliminates a crime or infraction, or changes the penalty for a crime or infraction, within the meaning of Section 17556 of the Government Code, or changes the definition of a crime within the meaning of Section 6 of Article XIII B of the California Constitution.